

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-006974

03/26/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

AURUNG ZEB ANDREW MASOWDI

AURUNG ZEB ANDREW MASOWDI
10064 N 42ND ST
PHOENIX AZ 85028-0000

v.

STATE OF ARIZONA DEPT OF HEALTH
SERVICES

KEVIN D RAY

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

This case is an Administrative Review action pursuant to A.R.S. Section 12-901 et seq. This Court heard oral argument on this case on January 27, 2003, and held the matter pending receipt of the certified record on appeal, which appeared to be filed under a wrong case number. This Court received the certified record on appeal on February 4, 2003, and this case has been under advisement since that time. This Court has reviewed the record in this case, the memorandum submitted by the parties, and considered the oral argument presented on January 27, 2003.

Pursuant to A.R.S. Section 12-910(e), this Court may review administrative decisions in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The Court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

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This Court's scope of review of agency determinations pursuant to the Administrative Review Act requires the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious or an abuse of discretion.¹ Only where an agency's decision is not supported by competent evidence should the reviewing court set it aside as being arbitrary and capricious.² A reviewing court may not substitute its own discretion for that exercised by an administrative agency,³ but must only determine if there is competent evidence to sustain the decision.⁴

Plaintiff, Aurung-Zeb Andrew Masowdi applied to the Arizona Department of Health Services for certification as an emergency medical technician. On the criminal history disclosure form, Plaintiff admitted that he had been previously convicted of two class 1 misdemeanors and was currently on probation. One of the charges (Impersonating a Public Servant) was committed December 7, 1999 and involved Plaintiff impersonating a Phoenix Fire Firefighter and taking a Phoenix Fire Department fire truck from the City of Phoenix Maintenance shop for a joy ride. Plaintiff drove the fire truck from Central Phoenix towards his home in North Phoenix with the lights and sirens on. He was arrested prior to reaching his home.

Plaintiff's application for certification was denied by the Arizona Department of Health Services. Plaintiff filed an administrative appeal and an administrative hearing was held before an administrative law judge, the Honorable Constantino Flores, on February 28, 2002. Administrative Law Judge Flores issued his recommended decision including findings of fact on March 18, 2002. He recommended that the Arizona Dept. of Health Services uphold its denial of Plaintiff's application for certification as an emergency medical technician. Thereafter, the Dept. of Health Services on March 20, 2002 approved and adopted the findings of fact and conclusions from the administrative law judge. Plaintiff's request for rehearing was denied April 2, 2002 and the prior determination from the Arizona Dept. of Health Services denying Plaintiff certification as an emergency medical technician was affirmed.

The Plaintiff contends that the administrative law judge's decision and the determination from the Arizona Dept. of Health Services was factually wrong and Plaintiff offers numerous exhibits attached to his memorandum in support of his claim that he has been rehabilitated. Plaintiff has not requested an evidentiary hearing in this case. This Court may not consider evidence not presented in open court for which Defendants are given an opportunity to cross-examine. Therefore, this Court must not consider the exhibits attached to the Plaintiff's memorandum.

¹ Klomp v. Arizona Dept. of Economic Security, 124 Ariz. 556, 611 P.2d 560 (App. 1980); Sundown Imports Incorporated v. Arizona Dept. of Transportation, 150 Ariz. 428, 565 P.2d. 1289 (App. 1977).

² City of Tucson v. Mills, 114 Ariz. 107, 559 P.2d 663 (App. 1976).

³ Arizona Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 546 P.2d 1152 (1976).

⁴ Schade v. Arizona State Retirement System, 109 Ariz. 396, 510 P.2d 42 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

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The Arizona legislature has vested the Arizona Dept. of Health Services with the authority to protect the health of the people of the State of Arizona.⁵ The Director of the Dept. of Health Services bears the responsibility for certification of emergency medical technicians, such as the position Plaintiff has sought certification from the department.⁶ The Arizona Department of Health Services must deny certification to applicants who have been convicted of, or committed any crimes of moral turpitude.⁷ The crime of Impersonating a Public Servant involves deceit or fraud and is clearly a crime of moral turpitude.

The administrative law judge concluded:

Mr. Masowdi failed to sustain his burden of proof. Although Mr. Masowdi appears to have made significant strides on his way to rehabilitation, at this point, he has not sufficiently showed that he is rehabilitated, and that he possess unique or exceptional skills, education, training or experience in regards to provided EMT-Basic services. Even more importantly, he has not convinced this tribunal, that he no longer presents a risk to the health, welfare, or safety of patients. Thus, at this point, the applicant does not meet the requirements for certification as an emergency medical technician.⁸

This Court finds that the Arizona Dept. of Health Services and the Administrative Law Judge fairly and accurately interpreted the evidence and information before them concerning Plaintiff's application for certification as an emergency medical technician. This Court finds substantial evidence supporting the determination by the Arizona Dept. of Health Services to deny Plaintiff's certification.

IT IS THEREFORE ORDERED affirming the determination and decision of the Arizona Department of Health Services denying Emergency Medical Technician-Basic certification to Plaintiff.

IT IS FURTHER ORDERED denying all relief as requested by the Plaintiff in his complaint in this case.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁵ A.R.S. Section 36-132(A)(1).

⁶ A.R.S. Section 36-2202(A)(2).

⁷ Arizona Administrative Code Section R9-25-501(C)(21)

⁸ Recommended Decision of Administrative Law Judge dated March 18, 2002, at page 4, certified record on review.

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